

2005 Annual Report
Michigan Department of Environmental Quality (MDEQ),
United States Environmental Protection Agency (USEPA), and
Environmental Council of the States (ECOS) Regulatory Innovations Proposal

Alternative Permitting Approach for
Concentrated Animal Feeding Operations (CAFOs) Project

May 2006
(amended May 25, 2006)

Overview of Project

The MDEQ, USEPA, and ECOS Regulatory Innovations Proposal, Alternative Permitting Approach for CAFOs Project (ECOS CAFO Project), began in 2002 and is a five-year project demonstrating regulatory innovation by providing an alternative to traditional permitting by offering an option to become verified in the livestock system of the Michigan Agriculture Environmental Assurance Program (MAEAP). The objective of the ECOS CAFO Project is to demonstrate that CAFOs verified in the MAEAP Livestock System provide equal or better environmental protections to those covered under the National Pollutant Discharge Elimination System (NPDES) CAFO permit.

A condition of approval of the ECOS CAFO Project was that the MDEQ would develop methods to determine success of the CAFO Project. There was a significant turning point this year in that we began to evaluate program effectiveness as is required in the agreement. The objective of the project is to demonstrate that CAFOs verified in the MAEAP Livestock System provide equal or better environmental protections to those covered under the NPDES CAFO permit. Therefore, to accomplish a more thorough review, the ECOS CAFO Project Assessment Plan was developed. The Assessment Plan encompasses the following provisions:

1. Compare the performance standards requirements for MAEAP verifications to what is required under the NPDES CAFO permit. MAEAP performance standards should minimally meet the federal/state effluent limitations established for CAFOs.
2. Determine voluntary compliance by the CAFOS in MAEAP with the ECOS Project requirements and, at a minimum, determine compliance with the 12-month time line to become MAEAP-verified.
3. Conduct inspections at the first 50 MAEAP-verified CAFOs. The review will look for similarities, differences, and/or identify gaps on MAEAP-verified farms as compared to the required permit effluent limitations specified in the NPDES permit. Inspecting the first 50 MAEAP-verified CAFOs would provide an excellent data set to analyze whether or not these facilities are in conformance with the MAEAP performance standards.

Implementation of the Assessment Plan began in this reporting period as reported in the following section.

2005 Implementation Activities

The following activities were accomplished during the reporting period of January 1, 2005 until December 31, 2005:

- 51 new letters of intent (LOI) to be MAEAP-verified were received
- 25 CAFOs verified in MAEAP Livestock System
- 9 certificates of coverage and 2 individual permits issued
- 12 inspections conducted at MAEAP-verified CAFOs

In accordance with the ECOS CAFO Project time line, September 1, 2005, was the last date by which an LOI was accepted to participate within this project. As of this date, 142 CAFOs have chosen the MAEAP track; 65 CAFOs are MAEAP-verified in the livestock system; and 77 CAFOs need to complete MAEAP verification by no later than September 1, 2006.

Of the total 142 CAFOs in the project, 86 CAFOs have reached the 1-year time limit for required verification in 2005 and 68 percent were not verified on time.

Significant progress was made by the MDEQ permitting program with the promulgation of its CAFO Rule, which became effective April 2005. A critical aspect of the CAFO Rule is that it clarifies the regulatory requirements and embodies the ECOS Agreement within rule by establishing the period to apply for the permit to coincide with the project. Along with the Rules, the MDEQ created several compliance tools for producers including the "MDEQ Comprehensive Nutrient Management Plan (CNMP) Requirements," "Guidance for the Evaluation of Existing Storage Structures," "Instructions for Determining Precipitation Forecast," and the "Technical Standard for Winter Surface Applications of CAFO Waste."

To further the understanding of the ECOS CAFO Project, the MDEQ and MDA continued to provide articles via the MAEAP newsletter, provided presentations at agricultural-related meetings, and the MDEQ maintained critical updates on the MDEQ NPDES CAFO Web page, including a Fact Sheet and a CAFO Questions and Answers document developed to clarify the CAFO permitting process.

Barriers to Project Success

Barriers continue to exist for producers as indicated by the number of farm operations that have not met the 12-month time to become MAEAP-verified. Operational and administrative issues continue to be problematic for producers seeking verifications of their farm operations.

Issues, such as inadequate land base calculations and the need for producers to seek funding to complete expensive upgrades, such as properly built storage structures and collection areas, continue to create delays. The barrier to producers having their CNMPs written due to shortages of certified plan providers appears to have lessened; however challenges will likely occur for producers who request verification close to the deadline of September 1, 2006. The MDA has indicated that verifications rarely occur at the first attempt and because of the number remaining to be verified, it is likely that some producers will miss their verification deadlines. Approximately 40 producers waited until September 1, 2005, to submit their LOI and this may be problematic based on survey results conducted as part of the master's thesis "Financial Costs and Environmental Outcomes of the MAEAP," by Carrie Vollmer-Sanders, Michigan State

University, Department of Agricultural Economics, November 2005. The survey reports that it takes CAFOs an average of 1.3 years to become MAEAP-verified.

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